

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**HB 1067 - SB 1233**

April 6, 2015

**SUMMARY OF BILL:** Creates a reciprocal discovery process in criminal trials.

A criminal defendant may elect, no later than 15 days after a case is set for trial, to participate in the disclosure process established by the bill. The defendant must file a "Notice of Witness and File Disclosure" (Notice) with the court and provide a copy to the district attorney general (DA). Filing the Notice binds the DA and the defendant to the reciprocal discovery procedure.

The DA must provide to the defendant, within 15 days after the defendant files the Notice, the names, including addresses and telephone numbers, of all persons the DA expects to call as witnesses at trial or at a hearing. The DA must provide to the defendant, within 30 days after the defendant files the Notice, the complete file of all law enforcement agencies, investigatory agencies, and the DA's office involved in the prosecution. Oral statements must be in writing or recorded form. Statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatory assistant do not have to be in writing or recorded form unless the statement contains information new or different from a previous statement made by the witness.

The defendant must provide to the DA, within 30 days after receiving the State's Witness and File Disclosure from the DA, the names, including addresses and telephone numbers, of all witnesses, except for the defendant, whom the defendant expects to call as a witness at trial or at a hearing.

If a potential witness is an expert, then the disclosure must indicate the expert's field of expertise in which the expert will offer an opinion. The opposing party shall be given an opportunity by the court to seek its own expert witness in the same field of expertise.

The disclosures are not to be filed with the court clerk or with the court, but a court may require the disclosures to be filed with the court under seal.

The court may restrict disclosure of a witness's name, address, or telephone number if it finds the disclosure would create a significant risk to any person of physical harm, intimidation, bribery, or economic reprisals.

Work product is not subject to disclosure; the identity of a confidential informant shall not be disclosed unless the informant is to be produced at a hearing or trial or the failure to disclose will infringe on the defendant's constitutional rights.

Creates a continuing duty to disclose. Authorizes the trial judge to prohibit the testimony of a witness whose name was not properly disclosed. Authorizes the trial judge to allow an undisclosed witness to testify.

## **ESTIMATED FISCAL IMPACT:**

**NOT SIGNIFICANT**

Assumptions:

- An indigent defendant must still request the services of an expert witness under the procedures in Tennessee Supreme Court Rule 13, and is not automatically entitled to an expert even though the DA discloses a potential expert witness.
- According to the Administrative Office of the Courts, the reciprocal discovery procedure will not impact the caseloads of the state trial and appellate courts.
- According to the District Attorneys General Conference and the District Public Defenders Conference, the reciprocal discovery procedure will not impact their caseloads.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "Jeffrey L. Spalding". The signature is written in a cursive, flowing style.

Jeffrey L. Spalding, Executive Director

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